

Legal regulation of conflict of interests in Czech republic de lege lata and de lege ferenda

Resumé:

This work deals with the institute of conflict of interests. This legal institute is typical for all types of state systems, however efforts to legally regulate it as appropriate exist usually only in certain systems (in particular in democratic systems). This institute can be basically divided in so called incompatibility of functions and the conflict of interests as such (i.e. the conflict between the public and the private interest).

Incompatibility of functions can be characterized as the basic requirement of each democratic legal state, which is reflected in the impossibility to concentrate functions (and related powers) which represent individual elements of state power. This first of all pre-empts misusing the entrusted public function and trust, further it also pre-empts misusing power up to the potential possibility of establishing authoritarian or totalitarian regimes. Therefore incompatibility can arise in particular where the division of powers exists, thus in particular in a democratic legal state. Separation of three individual basic pillars (i.e. legislative, executive and judicial powers) thus has its value in impossibility to concentrate functions from any of those pillars in the hands of one person.

The conflict of interests in the form of a ban on the conflict of the public interest and the private (personal) interest has its value in protection of public interests and in particular in protection of public funds. It is interesting that such conflict may in a real life quite easily happen but legal regulations of individual states which cover this sphere are in such case called to protect the public interest. A public officer is usually called to prefer the public interest to his/her personal interest.

However this is closely connected to Lobbying and corruption in public administration. Specially lobbying can very often create situations or conditions which subsequently lead to the conflict of interests. Corruption in public administration is then usually a situation which is already behind the bounds of criminal law. These issues are very important for stability of public sector and therefore also for quality development of a democratic legal state with active and strong civil society. If corruption expands beyond of measure it can mean for the given state a gradual disintegration of democratic

structures and the legal state. In such case it is usually only a thin line between taking over state power by authoritarian or totalitarian ideologies (in particular in economic crisis periods) which promise an easy and attractive way but for the price of human freedom and dignity.

For these reasons are these issues important for stable execution of democratic power in a state. Only thanks to a sufficient protection of the public interests the citizens can trust the plural politic system and the public sector in general. If this requirement is duly fulfilled the democratic legal state will be stabilized and able to resist potential above-stated pressures of authoritarian and totalitarian ideologies. To the contrary, if these premises are not fulfilled significant disruptions of contemporary democratic institutions can occur. The time when the basic human rights were not duly stipulated and observed is still historically relatively recent. Democracy as the system of state power was not lasting long in the global human history. Rather authoritarian and totalitarian regimes used to win from the long-term prospective. The mankind has therefore again a great opportunity to take a breath of freedom, tolerance and to protect freedom of individuals and their basic human rights. For the future it will thus be very much up to the society as such whether it will appreciate these freedoms and duly protect them. The institute of conflict of interests significantly contributes to such protection and in case of respecting the ban on conflict of interest by public officers it contributes to stabilization of the plural politic system and therefore also the democratic legal state as a whole.